

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DARYL COOK,

Petitioner,

v.

THE DISTRICT ATTORNEY OF THE
COUNTY OF PHILADELPHIA, et al.,

Respondents.

CIVIL ACTION

No. 11-3188

Memorandum & Order

November 29, 2011

On August 3, 2011, this court issued an order (Docket no. 8) denying petitioner's motion for reconsideration of its June 7, 2011 order (Docket no. 2) which dismissed petitioner's habeas corpus petition without prejudice on the ground that petitioner failed to exhaust his state court remedies. Currently before the court is petitioner's motion for reconsideration of the court's August 3, 2011 order. *See* Docket No. 9 at 1-2. In his present motion, petitioner reiterates his argument that inordinate delay has resulted from the Pennsylvania Common Pleas Court's failure to file an opinion and transmit the record on appeal to the Superior Court. Fourteen months have now elapsed since Petitioner filed his Notice of Appeal to the Superior Court. Fourteen months, while not insignificant, is not so long as to justify interference by a federal court. *See Cristin v. Brennan*, 281 F.3d 404, 411 (3d Cir. 2002) (noting that a 33-month delay after the filing of a petition for

post-conviction relief in state court is the shortest delay the Third Circuit has held to be ineffective for purposes of the exhaustion requirement); *Carpenter v. Young*, 50 F.3d 869, 870-71 (10th Cir. 1995) (“delay in adjudicating a direct criminal appeal beyond two years creates a presumption that state appellate process is ineffective”). Therefore, for the reasons stated in our August 3, 2011 order, petitioner is not entitled to appointment of counsel, nor to a certificate of appealability

Accordingly, it is hereby ORDERED that petitioner’s motion for reconsideration is DENIED.

BY THE COURT:

/s/ Louis H. Pollak
Pollak, J.